IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.992 OF 2004

Shri Kamlesh Devji Aiya .. Appellant

vs.

The Municipal Corporation of Greater Mumbai .. Respondent.

Mr.G.S. Godbole for the Appellant.

Mrs.Geeta Joglekar for the Respondent.

CORAM : A.S.OKA, J.

DATED : 12th April, 2005.

P.C. :

1. Heard advocates appearing for the parties. The challenge in this Appeal from Order is to the order dated October 1, 2004 passed by the learned Trial Judge by which the Notice of Motion for temporary injunction taken out by the Appellant-Plaintiff has been rejected.

2. During the pendency of this appeal, by letter dated March 21, 2005 issued by the Project Officer (Dharavi), G/North Ward of the Respondent - Corporation, alternate pitch described in the said letter was offered to the Appellant. The Appellant

has filed on record affidavit dated 14th April, 2005. In the said affidavit, the Appellant has shown readiness and willingness to accept the pitch offered to him by letter dated March 21, 2005. However, he has stated that there were certain obstructions on the site and it was not vacant. It is stated that the Project Officer has assured to clear the obstructions and to hand over the vacant site. In para 3 of the said affidavit, the Appellant has stated thus :

> "I say that if Respondent is ready to hand over vacant possession of the temporary alternative commercial accommodation being open space behind hut No.GNMCA-4-75 of Jayesh Aiya with permission to construct commercial structure admeasuring 10' x 8' equivalent to 80 sq.ft. on temporary basis till getting possession from Nehrunagar Vindeshwari Co-operative Housing Society Ltd. under SRA scheme, I am ready to unconditionally withdraw the LC Suit No.6133 of 2001 filed by me in the Bombay City Civil Court at Bombay as also Appeal from Order NO.992 of 2004 filed by me in this Hon'ble Court, on getting vacant possession of the said temporary pitch."

3. The learned counsel appearing for the Respondent on instructions of Sub-Engineer Shri Kanojia, G/North Ward states that there is some material lying on the site referred to in letter dated March 21, 2005. The learned counsel, on instructions, further stated that the said material

will be removed and vacant site will be handed over to the Appellant within a period of one week from today. The said statements are accepted. The statements made in para 3 of the affidavit dated April 4, 2005 are also accepted.

4. In view of what is recorded above, the appeal need not be entertained and subject to what is stated above, the appeal is disposed of with no order as to costs.

5. In view of what is stated by the Appellant in paragraph No.3 of the affidavit, on receiving possession of the pitch as mentioned in the letter dated March 21, 2005 the Appellant will make necessary application in the trial Court for withdrawal of the suit.

7. Parties to act on authenticated copy of this order.

(A.S. Oka, J.)